Section put and agreed to.

85. If a mortgage, made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Mortgage to secure uncertain amount when maximum is expressed

Illustration.

A mortgages Sultanpur to his bankers, *B* and *Co.*, to secure the balance of his account with them to the extent of Rs. 10,000. *A* then mortgages Sultanpur to *C* to secure Rs. 10,000 *C*, having notice of the mortgage to *B & Co.* and *C* gives notice to *B & Co.*, of the second mortgage. At the date of the second mortgage, the balance due to *B & Co.*, does not exceed Rs. 5,000. *B & Co.* subsequently advanced to *A* sums making the balance of the account against him exceed the sum of Rs. 10,000. *B & Co.* are entitled, to the extent of Rs. 10,000, to priority over *C*.

Section put and agreed to.

President.—Section 86. Mr. Kunjunni Raja.

Mr. C. A. Kunjunni Raja.—Before the beginning of section 86 insert as a sub-heading 'Marshalling and contribution'.

Mr. A. B. Salem.—I second it.

The amendment was put and carried.

Question put: *that the section as amended, stand part of the bill.*

Marshalling and contribution.

If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.

Marshalling securities.

Motion carried.

President.—Sections 87 to 119.

87. Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date.

Contribution to mortgage-debt.

Where of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the

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latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 86 to the claim of the subsequent mortgagee.

The Section was put and agreed to.

Power to deposit in Court money due on mortgage.

88. At any time after the principal money payable in respect of any mortgage has become due and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any court in which he might have instituted such suit, to the account of the mortgagee the amount remaining due on the mortgage.

Right to money deposited by mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same court the mortgage-deed and all documents in his possession or power relating to the mortgaged property, apply for and receive the money, and the mortgage deed and all such other documents so deposited shall be delivered to the mortgagor or such other person as aforesaid.

When the mortgagee is in possession of the mortgaged property, the court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to retransfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished.

The Section was put and agreed to.

Cessation of interest.

89. When mortgagor or such other person as aforesaid has tendered or deposited in court under section 88 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or in the case of a deposit, where no previous tender of such amount has been made, as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, and the notice required by section 88 has been served on the mortgagee:

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal.

Nothing in this section or in section 88 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money and such notice has not been given before the making of the tender or deposit, as the case may be.

The Section was put and agreed to.

Persons who may sue for redemption.

90. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:—

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(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(b) any surety for the payment of the mortgage-debt or any part thereof; or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

The Section was put and agreed to.

Subrogation.

91. Any of the persons referred to in section 90 (other than the mortgagor) and a co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

The Section was put and agreed to.

Prohibition of tacking.

92. No mortgagee paying off a prior mortgage whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by section 85, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

The Section was put and agreed to.

Rights of mesne mortgagee.

93. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has agaist the mortgagor.

The Section was put and agreed to.

Rights of redeeming co-mortgagor to expenses.

94. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 91 against his co-mortgagors, be entitled to add to the mortgage money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

The Section was put and agreed to.

Mortgage by deposit of title deeds.

95. The provision hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds.

The Section was put and agreed to.

Anomalous mortgage.

96. In the case of an anomalous mortgage, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and so far as such contract does not extend, by local usage.

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The Section was put and agreed to.

Charges.

97. Where immovable property of one person is, by act of parties or operation of law, made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

The Section was put and agreed to.

No merger in case of subsequent encumbrance.

98. Any mortgagee of, or person having a charge upon, immovable property, or any transferee from such mortgagee or charge holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto.

The Section was put and agreed to.

Service or tender on or to agent.

99. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person, or otherwise duly authorised to accept such service or tender, shall be deemed sufficient.

Where no person or agent on whom such notice should be served can be found or is known to the person required to serve the notice, the latter person may apply to any court in which a suit might be brought for redemption of the mortgaged property, and such court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Provided that, in the case of a notice required by section 88, in the case of a deposit, the application shall be made to the court in which the deposit has been made.

Where no person or agent to whom such tender should be made can be found or is known to the person desiring to make the tender, the latter person may deposit in any court in which a suit might be brought for redemption of the mortgaged property the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

The Section was put and agreed to.

Notice, etc., to or by person incompetent to contract.

100. Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served on or by or tender or deposit made, accepted, or taken, by the legal curator of the property of such person; but where

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there is no such curator, and it is requisite or desirable, in the interests of such person, that a notice should be served, or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXX of the Cochin Code of Civil Procedure, shall, so far as may be, apply to such application, and to the parties thereto, and to the guardian appointed there-under.

The Section was put and agreed to.

Power to make rules.

101. The Chief Court may, from time to time, make rules consistent with this Regulation for carrying out, in itself and in the Courts of Civil Justice subject to its superintendence, the provisions contained in this Chapter.

The Section was put and agreed to.

"Lease" defined.

102. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered, periodically or on specified occassions, to the transferor by the transferee who accepts the transfer on such terms.

"Lessor," "lessee", "premium," and "rent" defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service, or other thing to be so rendered, is called the rent.

The Section was put and agreed to.

Duration of certain leases in absence of written contract or local usage.

103. In the absence of a contract or local law or usage to the contrary a lease of immovable property, for agricultural or manufacturing purposes, shall be deemed to be a lease from year to year terminable, on the part of either lessor or lessee, by six months notice ex piring with the end of a year of the tenancy: and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

The Section was put and agreed to.

Leases how made.

104. A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent can be made only by a registered instrument.

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All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee.

Provided that the Government may, from time to time, by notification in the Cochin Government Gazette, direct that leases of immovable property other than leaases from year to year, or for any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

The section was put and agreed to.

Rights and liabilities of lessor and lessee.

105. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another respectively, possess the rights and are subject to the liabilities mentioned in the rules next following or such of them as are applicable to the property leased:—

A.—Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is, and the latter is not aware, and which the latter could not with ordinary care discover;

(b) the lessor is bound, on the lessee's request, to put him in possession of the property ;

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contract binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to, and go with the lessee's interest as such and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B.—Rights and Liabilities of the Lessee.

(d) If during the continuance of the lease any accession is made to the property, such accession shall be deemed to be comprised in the lease;

(e) if, by fire, tempest, or flood or violence of an army or of a mob, or other irresistible force, any material part of property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occassioned by the wrongful act or default of the lessee he shall not be entitled to avail himself of the benefit of this provision;

(f) if the lessor neglects to make, within a reasonable time after notice, any repair which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor ;

(g) if the lessor neglects to make any payment which he is bound to make and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor ;

(h) the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards, all things which he has attached to the earth ; provided he leaves the property in the state in which he received it ;

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(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee, and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j) the lessee may transfer, absolutely, or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorise a tenant, having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of the Court of Wards, to assign his interest as such tenant, farmer, or lessee;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest;

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) the lessee is bound to keep, and on the termination of the lease, to restore, the property in as good a condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property, and inspect the condition thereof and give or leave notice of any defect in such condition; and when such defect has been caused by any act or default on the part of the lessee, his servants, or agents, he is bound to make it good within three months after such notice has been given or left;

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable deligence, notice thereof to the lessor;

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own, but he must not use, or permit another to use the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure except for agricultural purposes;

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

The section was put and agreed to.

Rights of lessor's transferee.

106. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor, as to the property or part transferred so long as he is the owner of it, but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease unless the lessee elects to treat the transferee as the person liable to him.

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Provided that the transferee is not entitled to arrears of rent due before the transfer and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor. the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased.

The section was put and agreed to.

Exclusion of day on which term commences.

107. Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.

Where the time so limited is a year, or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee and not the lessor shall have such option.

The section was put and agreed to.

Determination of lease.

108. A lease of immovable property determines—

(a) by efflux of the time limited thereby ;

(b) where such time is limited conditionally on the happening of some event—by the happening of such event ;

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event ;

(d) in case the interests of the lessee and the lossor in the whole of the property become vested at the same time in one person in the same right ;

(e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor by mutual agreement between them ;

(f) by implied surrender ;

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter ; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event ; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease ;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to Clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease and such lease determines thereupon.

The section was put and agreed to.

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109. A forfeiture under section 108 clause (g) is waived by the acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

The section was put and agreed to.

110. A notice given under section 108 clause (h) is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it, showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(a) *A*, the lessor, gives *B*, the lessee, notice to quit the property leased. The notice expires. *B* tenders, and *A* accepts rent which has become due in respect of the property since the expiration of the notice. The notice is waived,

(b) *A*, the lessor, gives *B*, the lessee, notice to quit the property leased. The notice expires and *B* remains in possession. *A* gives to *B*, as lessee, a second notice to quit. The first notice is waived.

The section was put and agreed to.

111. Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in a rear, together with interest thereon and his full costs of the suit, or gives such security as the court thinks sufficient for making such payment within fifteen days, the court may in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture, and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Relief against forfeiture for non-payment of rent.

The section was put and agreed to.

112. Where a lease of immovable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

Relief against forfeiture in certain other cases.

(a) specifying the particular breach complained of ; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach ;

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.

The section was put and agreed to.

113. The surrender, express or implied, of a lease of immovable property does not prejudice an underlease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of

Effect of surrender and forfeiture on underleases.

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obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to, and enforceable by, the lessor.

The forfeiture of such a lease annuls all such underleases, except where such forfeiture has been procured by the lessor in fraud of the underlessees, or relief against the forfeiture is granted under section 111.

The section was put and agreed to.

Effect of holding over.

114. If a lessee or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 105.

Illustrations

(a) *A* lets a house to *B* for 5 years. *B* underlets the house to *C* at a monthly rent of Rs. 100. The five years expire, but *C* continues in possession of the house and pays the rent to *A*. *C*'s lease is renewed from month to month.

(b) *A* lets a farm to *B* for the life of *C*. *C* dies, but *B* continues in possession with *A*'s assent. *B*'s lease is renewed from year to year.

The section was put and agreed to.

Exemption of leases for agricultural purposes.

115. None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the Government may, by notification published in the Cochin Government Gazette, declare all or any of such provisions to be so applicable in the case of all or any of such leases, together with, or subject to, those of the local law (if any) for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

The section was put and agreed to.

"Exchange" defined.

116. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

The section was put and agreed to.

Right of party deprived of things received in exchange

117. If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration.

The section was put and agreed to.

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118. Save as otherwise provided in this Chapter, each party has the rights, and is subject to the liabilities, of a seller as to that which he gives, and has the rights, and is subject to the liabilities of a buyer as to that which he takes.

Rights and liabilities of parties.

119. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

The section was put and agreed to.

President.—Section 120. Mr. Kunjunni Raja.

Mr. C. A. Kunjunni Raja.—In section 120 change 'may' into 'must' after 'such acceptance'.

Mr. A. B. Salem.—I second it.

The amendment was put and carried.

Question put: *that the section as amended, stand part of the Bill.*

120. "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called the donor to another called the donee, and accepted by or on behalf of the donee.

"Gift" defined.

Such acceptance must be made during the life-time of the donor, and while he is still capable of giving.

Acceptance when to be made.

If the donee dies before acceptance, the gift is void.

Motion carried

President.—Then sections 121 and 122.

121. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Transfer how effected.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid, or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

The section was put and agreed to.

122. A gift comprising both existing and future property is void as to the latter.

Gift of existing and future property.

The section was put and agreed to.

President.—Section 123. Mr. Kunjunni Raja.

Mr. C. A. Kunjunni Raja.—In section 123 insert 'as' between 'void' and 'to'.

Mr. C. V. Kurian.—I second it.

The amendment was put and carried

Question put: *that section 123 as amended, stand part of the Bill.*

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123. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

Gift to several of whom one does not accept.

Motion carried.

President.—The remaining sections may be read and passed.

124. The donor and donee may agree that, on the happening of any specified event which does not depend on the will of the donor, a gift shall be suspended or revoked; but a gift, which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

When gift may be suspended or revoked.

A gift may also be revoked in any of the cases (save want or failure of consideration in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a) *A* gives a field to *B*, reserving to himself, with *B*'s assent the right to take back the field in case *B* and his descendants die before *A*. *B* dies without descendants in *A*'s life-time. *A* may take back the field.

(b) *A* gives a lakh of rupees to *B*, reserving to himself with *B*'s assent the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs 10,000, which continue to belong to *A*.

The section was put and agreed to.

125. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Onerous gifts.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them, and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract, and accepting property burdened by any obligation, is not bound by his acceptance. But, if, after becoming competent to contract, and being aware of the obligation, he retains the property given he becomes so bound.

Onerous gift to disqualified person.

Illustrations.

(a) *A* has shares in *X*, a prosperous joint stock company and also shares in Y, a joint-stock company in difficulties. Heavy calls are expected in respect of the shares in Y. *A* gives *B* all his shares in joint stock companies. *B* refuses to accept the shares in Y. He cannot take the shares in *X*.

(b) *A* having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to *B* the lease, and also, as a separate and independent transaction, a sum of money. *B* refuses to accept the lease. He does not, by his refusal, forfeit the money.

The section was put and agreed to.

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126. Subject to the provisions of section 125 where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

Universal donee

The section was put and agreed to

127. Nothing in this chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan Law.

Saving of donations *mostis causa* **and Muhammadan Law.**

The section was put and agreed to.

128. (1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instrument and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not.

Transfer of actionable claim.

Provided that every dealing with the debt or other actionable claim by the debtor or other person, from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

Illustrations.

(i) *A* owes money to *B*, who transfers the debt to *C*. *B* then demands the debt from *A*, who, not having received notice of the transfer as prescribed in section 129 pays *B*. The payment is valid, and *C* cannot sue *A* for the debt.

(ii) *A* effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If *A* dies, the Bank is entitled to receive the amount of the policy, and to sue on it without the concurrence of *A*'s executor, subject to the proviso in sub-section (1) of section 128 and to the provisions of section 130.

The section was put and agreed to.

129. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Notice to be in writing signed.

The sution was put and agreed to.

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130. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Liability of transferee of actionable claim.

Illustrations.

(i) *A* transfers to *C*, a debt due to him by *B*, *A* being then indebted to *B*. *C* sues *B* for the debt due by *B* to *A*. In such suit *B* is entitled to set off the debt due by *A* to him although *C* was unaware of it at the date of such transfer.

(ii) *A* executed a bond in favour of *B* under circumstances entitling the former to have it delivered up and cancelled. *B* assigns the bond to *C* for value and without notice of such circumstances. *C* cannot enforce the bond against *A*.

The section was put and agreed to.

131. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Warranty of solvency of debtor.

The section was put and agreed to.

132. Where a debt is transferred for the purpose of securing an existing or future debt the debt so transferred, if received by the transferor, or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

Mortgaged debt.

The section was put and agreed to.

133. Every assignee, by endorsement or other writing, of a policy of marine insurance, or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

Assignment of rights under marine or fire policy of insurance.

The section was put and agreed to.

134. No judge, legal practitioner, or officer connected with any court of justice shall buy, or traffic in, or stipulate for, or agree to receive any share of or interest in, any actionable claim, and no court of justice shall enforce, at his instance or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

Incapacity of officers connected with courts of justice.

The section was put and agreed to.

135. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being by law or custom, negotiable, or to any mercantile document of title to goods.

Saving of negotiable instruments, etc.

Explanation.—The expression, a "mercantile document of title to goods," includes a bill of lading, dock-warrant, warehouse keeper's certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession

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or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

The section was put and agreed to.

Mr. C. A. Kunjunni Raja.—Under Standing Order No. 42, I move that the Cochin Transfer of Property Bill, as amended by this Council, may be taken up, and passed to-morrow (Wednesday).

Mr. A. Eachara Menon.—I second it.

President.—The question is that the Bill, as amended by the Council, be taken up and passed to-morrow.

Motion put and agreed to.

Cochin Thiyya Bill.

President.—Mr. K. Ayyappan will present the Select Committee Report on the Cochin Thiyya Bill.

Mr. K. Ayyappan.—I beg to present the Select Committee Report on the Cochin Thiyya Bill and move that the Bill, as amended by the Select Committee, be taken up and considered.

Mr. M. K. Raman.—I second it.

President.—The question is that the Cochin Thiyya Bill as amended by the Select Committee be taken up for consideration.

Motion put and agreed to.

Mr. K. Ayyappan.—I then move that the whole Bill may be taken up and passed. There are no amendments.

Mr. C. A. Kunjunni Raja.—Under Standing Order No. 41.

President.—But there are no amendments.

Mr. K. Ayyappan.—But the second reading has to be passed now.

President.—"If no amendment be made when a motion that a Bill be taken into consideration, has been agreed to by the Council, or if the amendments proposed have been considered by the Council, the Member in charge of the Bill or in his absence any Member may move that the Bill or the Bill as amended, as the case may be, be taken up and passed at a subsequent meeting".

Mr. K. Ayyappan.—I move that the Bill may be taken up and passed on Thursday.

Mr. M. K. Raman.—I second it.

President.—The question is that the Cochin Thiyya Bill may be taken up and passed on Thursday.

The motion was put and agreed to.

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